



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: MAY 04, 2023

IN THE MATTER OF:

Appeal Board No. 628032

PRESENT: JUNE F. O'NEILL, RANDALL T. DOUGLAS MEMBERS

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective July 2, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed February 10, 2023 (), the Administrative Law Judge granted the claimant's application to reopen A.L.J. Case No. 322-03402 and overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked for a school district full time from February 6, 2019 through June 24, 2022 as a teaching assistant in a classroom for two-and-a-half to five-year-olds. She also had a part-time job as a department store cashier.

With the onset of the COVID-19 pandemic, students attended school remotely in the spring and fall of 2020. Some students returned to school in March 2021, with 9 students in the classroom instead of the usual 18. The full student

population returned in person for the 2021-2022 school year.

The claimant found that the building's custodial staff in 2021-2022 was not keeping the bathrooms clean. The small children she worked with would often make messes in the bathroom in her classroom. The claimant or another staff member would call the custodians, but no custodian would come. The claimant then would clean the bathroom herself, which was not her job. There was another bathroom across the hall, but the claimant found that this bathroom was not suitable for the small children she worked with. The nurse's office also was nearby and had a bathroom, but it was not always accessible depending on the circumstances in the nurse's office at any given moment.

The claimant also found the cafeteria to be cleaned inadequately. She would wind up wiping down tables and performing other cleaning tasks while also assisting children with opening milk cartons and other aspects of feeding themselves.

The claimant complained to the principal on an ongoing basis about the inadequate cleanliness. The custodians reported to the building engineer, not the principal. The principal would speak to the building engineer about concerns regarding the custodians, and she reported specific problems to the custodians if she saw them. The principal also encouraged the claimant to communicate with the building engineer.

The claimant was 61 years old. She had recently completed cancer treatment, and her immune system was weakened. At school, children were getting sick, as is normal for small children, and children and adults were getting COVID. The claimant also concluded that working more than 60 hours per week at her two jobs was too much for her. The claimant was concerned for her health. She called the New York State Teachers Retirement System to find out whether she could retire. The Retirement System told her that she could retire and that her retirement would be effective July 1, 2022. The claimant did not receive medical advice to quit or retire. The claimant did not tell any of the building's principals that she would be leaving her job if conditions in the building did not improve.

The school district issued a letter to the claimant with a mail date of June 23, 2022 offering her reasonable assurance of continued employment in the fall. The claimant received the letter. Her last day of work for the school district was June 24, 2022, when the school year ended. The claimant continued

working for the department store, where she felt the working conditions did not jeopardize her health the way she felt the working conditions at the school did.

In mid-July 2022, the claimant's manager at the department store got transferred. Nobody else from the store ever got back to the claimant about scheduling her for work. The claimant's last day of work at the department store was around the middle of July 2022.

Because she did not hear back from the department store, the claimant filed a claim for unemployment benefits, effective August 1, 2022.

By letter dated August 23, 2022 and stamped "Received" by human resources that same date, the claimant notified the school district that she retired effective July 1, 2022.

The claimant received a Notice of Hearing for a hearing scheduled for November 4, 2022. The claimant did not appear that day because she wanted legal representation and did not yet have anyone to represent her. She submitted her application to reopen on November 15, 2022.

OPINION: The credible evidence establishes that the claimant did not appear at the hearing scheduled for November 4, 2022 because she was seeking legal representation. The claimant notified the Hearing Section of this situation prior to the hearing, and she applied to reopen on November 15, 2022. We find that the claimant has shown good cause to grant the application to reopen. Accordingly, we conclude that the application to reopen is granted.

The credible evidence further establishes that the claimant retired from her school district job for a variety of health-related reasons including poor sanitation, fear of COVID, the stress of working two jobs, and her compromised immune system after recently completing cancer treatment. Significantly, however, the claimant did not receive medical advice to leave her job, and she also did not inform the employer that her concerns had reached the point that she was ready to retire if the situation did not improve. Further, although the claimant intended to continue working at the department store, that job ended before the claimant finalized her retirement. We are not persuaded by the claimant's contention that she informed the school of her retirement on June 23, 2022, as the claimant was unable to explain why her retirement letter was dated August 23, 2022, and the employer's witness specifically denied

receiving the claimant's letter in June. Meanwhile, the August 23 date, written in the claimant's own handwriting, is corroborated by the "Received" stamp showing that the letter was filed with the employer's human resources department on August 23. By the time the claimant submitted this retirement letter, the claimant knew that her department store job had ended. The claimant's choice to go forward with her retirement constitutes a voluntary quit. Further, for purposes of the Unemployment Insurance Law, the claimant's reasons for quitting do not constitute good cause to quit. We have previously held that a general fear of contracting COVID, without more, is not good cause to quit (see Appeal Board No. 617408). In addition, the claimant's choice to clean the bathrooms and other areas was voluntary on her part and does not indicate a substantial change in the terms and conditions of the claimant's employment. Accordingly, we conclude that the claimant voluntarily quit without good cause, and the claimant is disqualified from receiving benefits.

DECISION: The decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

The claimant's application to reopen 322-03402 is granted.

The initial determination, disqualifying the claimant from receiving benefits, effective July 2, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER

RANDALL T. DOUGLAS, MEMBER